

# Agenda

## Item #6



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 10, 2009

Re: Scope of Investigation of National Organization for Marriage

---

At the October 1, 2009 meeting, the Maine Ethics Commission authorized the staff to conduct an investigation regarding whether the National Organization for Marriage (NOM) violated 21-A M.R.S.A. § 1056-B. Under that provision, organizations raising or spending more than \$5,000 for the purpose of initiating or promoting a ballot question are required to register and to file campaign finance reports as a ballot question committee. The most recent campaign finance reporting available states that NOM has contributed \$1,600,000 to the Stand for Marriage Maine PAC in support of the November 3, 2009 people's veto referendum concerning same sex marriage. I have attached the version of the statute that was applicable before September 12, 2009.

**Constitutional Challenge**

On October 21, 2009, NOM and another plaintiff brought a constitutional challenge to 21-A M.R.S.A. § 1056-B in U.S. District Court for the District of Maine. On October 28, 2009, U.S. District Judge D. Brock Hornby issued a Decision and Order denying plaintiffs' request for a temporary restraining order enjoining the Commission from enforcing the statute. NOM's constitutional challenge to the statute will proceed in the

court. As of this date, the court has not scheduled any discovery, motions, or a trial date, but that scheduling may occur soon.

### **Scope of Investigation**

In the view of the Commission staff, the investigation should cover whether NOM “solicit[ed] or receive[ed] contributions” totaling more than \$5,000 “for the purpose of initiating [or] promoting” the people’s veto referendum on same-sex marriage. The investigation will include, but not be limited to, the following topics:

- What fundraising methods did NOM employ to solicit the money that it has contributed to the Stand for Marriage Maine PAC?
- What was NOM’s purpose in soliciting or receiving these funds?
- What did NOM communicate to the individuals and organizations that it solicited?
- Did NOM receive any contributions within the categories set forth in § 1056-B(2-A)? If so, how much was received in these categories?
- Of the fundraising methods that are presently known (*e.g.*, e-mail solicitations, newsletter), how much did NOM receive in response to these solicitations?

It may be necessary to investigate whether NOM made any expenditures to initiate or to promote the referendum *other than by contribution* to Stand for Marriage Maine PAC. Initially, the staff does not intend that topic to be the primary focus of the investigation.

### **Confidentiality of Investigation**

The Maine Election Law authorizes the Commission to keep certain categories of information and records (“investigative working papers”) confidential in the course of conducting an investigation. (21-A M.R.S.A. § 1003(3-A), attached) These categories include:

- financial information not normally available to the public, and
- information belonging to a political action committee or ballot question committee that, if disclosed, would reveal sensitive political or campaign information.

If NOM provides information or records within these categories, the Commission staff intends to keep them confidential unless necessary for the limited disclosure purposes set forth in the statute.

I have attached some comments that I received this morning from Fred Karger.

Thank you for your consideration of this memorandum.



**21-A M.R.S.A. § 1056-B**  
**(in effect 6/30/08 - 9/11/09)**

**21A § 1056-B. Ballot question committees**

Any person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality. Within seven days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the Commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question. The Commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

**1. Filing requirements.** A report required by this section must be filed with the Commission according to a reporting schedule that the Commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

**2. Content.** A report must contain an itemized account of each expenditure made to and contribution received from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name and address of each contributor, payee or creditor. The filer is required to report only those contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

**2.A. Contributions.** For the purposes of this section, "contribution" includes, but is not limited to:

A. Funds that the contributor specified were given in connection with a ballot question;

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and

D. Funds or transfers from the general treasury of an organization filing a ballot question report.

**3. Forms.** A report required by this section must be on a form prescribed and prepared by the Commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

**4. Records.** A person filing a report required by this section shall keep records as required by this subsection for one year following the election to which the records pertain.

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and all expenditures made for those purposes.

B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

## 21-A MRSA § 1003. INVESTIGATIONS BY COMMISSION

**1. Investigations.** The commission may undertake audits and investigations to determine the facts concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. A person or political action committee that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission.

**2. Investigations requested.** A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

### 2-A. Confidentiality. [RP]

**3. State Auditor.** The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

**3-A. Confidential records.** Investigative working papers of the commission are confidential and may not be disclosed to any person except the members and staff of the commission, the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an investigation or audit:

- A. Financial information not normally available to the public;
- B. Information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's authorized committee that, if disclosed, would reveal sensitive political or campaign information;
- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation.

The commission may disclose investigative working papers, except for the information or records subject to a privilege against discovery or use as evidence, in a final audit or investigation report or determination if the information or record is materially relevant to a finding of fact or violation.

**4. Attorney General.** Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.





## MEMORANDUM

TO: Commissioners, State of Maine Commission on Governmental  
Ethics and Elections Practices

FROM: Fred Karger

DATE: November 10, 2009

RE: National Organization for Marriage Investigation

---

Please note the press release below dated November 9, 2009 from the National Organization for Marriage (NOM) re their next campaign to raise \$500,000 to defeat Republican Senators in New York State if they vote to support the same-sex marriage bill. This money will be raised specifically for New York, and they very clearly state that in yesterday's release.

What is particularly interesting is that in spite of what Executive Director Brian Brown has repeatedly stated, that the (at least) \$1.8 million they spent in Maine to pass Question 1 was from their "general fund," this press release is typical of their fund-raising which has always been state specific.

In Mr. Brown's sworn and notarized affidavit of September 26, 2009, and received by your Commission on September 28, 2009, Mr. Brown states that, "NOM has not solicited donations specifically for the Maine referendum. Further, NOM does not accept donations designated for the Maine referendum."

Was Maine the one state exception to their long-standing fund-raising practice?

NOM has raised money state by state, beginning with the \$2 million that it raised in California, through the 11 other states where it have been active. This is the same strategy they are now using in New York.

I submitted 16 fund-raising emails to the Commission as a part of my August 24, 2009 complaint, all of which mentioned Maine. In spite a 2009 budget of somewhere between \$7 million, claimed by Mr. Brown, and \$10 million claimed by NOM president Maggie Gallagher only \$295 was raised from two of the sixteen fund-raising emails? Who could possibly believe that?

Mr. Brown also states in his September 26 affidavit that NOM gets most of its money from major donors and national organizations, "the remainder of its funds are received from undesignated donations from direct mail solicitations."

Well, having seen what I believe are all of NOM's direct mail solicitations (most solicitations were done through the 79 emails that I submitted), I can attest to the fact that they continually ask for money for specific state battles as evidenced by the full color NOM newsletter and solicitation for Maine that I submitted to you at your October 1, 2009 meeting.

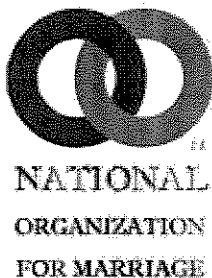
They are obviously not telling the truth, when they swear that the \$1.8 million that they spent in Maine was just part of their normal fund-raising.

I know this, because I have been closely following NOM for over 17 months. There is no one any more familiar with their organization than I am.

For that reason, I will make myself available to the Commission staff to help in any way that I can to get to the truth as you proceed with your investigation of the National Organization for Marriage.

Thank you so much for conducting this investigation, and for standing up to the intimidation and legal action directed at you and the other election officials in Maine by the National Organization for Marriage.

Your dedication to get to the truth and fight for transparency is greatly appreciated by all who enjoy free and honest elections.



This just posted by the National Organization for Marriage:

**FOR IMMEDIATE RELEASE**

November 9, 2009

**CONTACT:**

Elizabeth Ray (x130) or Mary Beth Hutchins (x105) at 703-683-5004

**NATIONAL ORGANIZATION FOR MARRIAGE SENDS A MESSAGE TO NEW YORK STATE GOP  
LEGISLATORS: "Vote for Gay Marriage and We Will Fund a Primary Challenge."**

WASHINGTON – Following up on its successful campaign to defeat Dede Scozzafava in NY-23, The National Organization for Marriage's (NOM) Executive Director Brian Brown announced plans to build a \$500,000 war chest to fund a primary challenge to any Republican senator who votes for gay marriage – regardless of the outcome of Tuesday's vote in the State Senate.

“There is no Republican Senate district in New York where the majority of people support gay marriage. Maine has made that very clear,” said Brian Brown. “The GOP should learn from Dede Scozzafava’s experience: voting for gay marriage does not pay.”

50 percent of voters who abandoned Dede Scozzafava to vote for Doug Hoffman said that Dede’s vote for gay marriage was a significant factor, according to a NOM poll of voters in NY-23 released on Election Day.

New York’s Governor Paterson pushed the same sex marriage bill to the top of the priority list for this week’s State Senate vote.

***To speak with Maggie Gallagher, President, or Brian Brown, Executive Director of NOM, please contact Elizabeth Ray ext. 130, [eray@crcpublicrelations.com](mailto:eray@crcpublicrelations.com), or Mary Beth Hutchins ext. 105, [mhutchins@crcpublicrelations.com](mailto:mhutchins@crcpublicrelations.com), at 703-683-5004.***

The National Organization for Marriage (NOM) is a nonprofit organization with a mission to protect marriage and the faith communities that sustain it. Founded in response to the growing need for an organized opposition to same-sex marriage in state legislatures, NOM serves as a national resource for marriage-related initiatives at the state and local level. For decades, pro-family organizations have educated the public about the importance of marriage and the family, but have lacked the organized, national presence needed to impact state and local politics in a coordinated and sustained fashion. NOM seeks to fill that void, organizing as a 501(c)(4) nonprofit organization, giving it the flexibility to lobby and support marriage initiatives across the nation. Find out more at [www.nationformarriage.org](http://www.nationformarriage.org).